

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY NINTH DAY OF JUNE

TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and

THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

WRIT PETITION NO : 5035 of 2003

Between:

- 1 Union of India Rep.by its General Manager
South Cenral Railway,Rail Nilayam Secunderabad.
- 2 The Chief Personnel Officer South Cenral Railway
4th Floor,Rail Nilayam Secunderabad.
- 3 The Dy.Chief Mechanical Engineer (Upgraded as Chief Workshop
Manager)
Personnel Branch,Wagon Workshop, South Central Railway,
Guntupalli.
- 4 The Workshop Personnel Officer
Wagon Workshop South Central Railway
Gutupalli.

.....
PETITIONER(S)

AND

P.Parthasarathy S/o.Late P.Venkateswarlu
O/o.Deputy Controller of Stores/M&G/Guntupalli S.C.Railway
R/o.H.No.8-3-8,1st Lane Kedareswarpet,Vijayawada.

.....
RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue appropriate writ, order or direction more particularly one in the nature of Writ of Certiorari in declaring the Judgement dated 10-12-2002 in O.A.No.1368/2002 on the file of Central Administrative Tribunal, Hyderabad Bench as bad, illegal and void and quash the same, and pass such other order or orders.

For the Petitioners: Mr.R.S.MURTHY , Standing Counsel for Railways

For the Respondent No.: MR.VEMURIVENKATESWARA RAO

The Court made the following order: -

ORDER: (Per **B.Seshasayana Reddy**, J)

1. Aggrieved by the judgment dated 10-12-2002 passed in O.A.No.1368 of 2002 on the file of Central Administrative Tribunal, Hyderabad bench, Hyderabad, the respondents therein have filed this Writ Petition.

2. The respondent herein is the applicant in O.A.No.1368 of 2002. He filed the O.A. seeking a declaration that he is entitled for absorption in the alternative job on Medical De-categorization in the scale of 4500-7000 with all consequential benefits such as seniority, promotion etc. and protection of his basic pay of 4875 w.e.f. 23.1.1998 and consequential quashing of the letter dated 28-11-2000 issued by the Workshop Personal Officer, wagon Workshop, South Central Railway, Guntupalli (R4 therein).

3. The case of the applicant in brief is as follows:

He was initially appointed as a Group-D employee in South Central Railway w.e.f. 27.1.1969. He was promoted to Group C in the clerical grade and his services were confirmed w.e.f. 1.1.1981. Latter he was promoted as Skilled Grade II Fitter and also to Skilled Grade I Fitter. While working as Skilled Grade I Fitter, he submitted a representation dated 24.4.1997 requesting the authorities to refer him to Railway Medical authorities for conducting a special medical examination since he was suffering from severe pain in left knee joint

and muscle wasting of the left leg. He was subjected to medical examination by Railway Medical Department which declared him as unfit for the post of fitter and recommended for sedentary job in C-I category on 19.6.1997. He was absorbed as Junior clerk in the scale of pay of Rs.3050-4590 w.e.f. 23.1.1998 in the office of Deputy Controller of Stores, M&G, Guntupalli. His grievance is that his absorption in the lower grade post without protection of his grade and last pay drawn in the post of HSK Grade I is contrary to Sec.47(1) of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short Act) and the Railway Board's Instructions in Serial Circular No.68/97 and Circular Letter dated 15-4-1997. Therefore, he submitted representations to the authorities to review his case and allow all the benefits to which he is entitled to as a medical de-categorized employee. As his representations did not yield any fruitful result, he tapped the doors of Central Administrative Tribunal by filing O.A.No.1368 of 2002 with the following relief:

“ Therefore, it is prayed that this Hon'ble Tribunal may be pleased to quash the Lr.No.GR/P.439/A/Vol.IV, dt.28-11-2000 issued by the 4th respondent as illegal, arbitrary and unconstitutional and declaring that the applicant herein is entitled for absorption in the alternative job on medical de-categorization in the scale of pay of Rs.4500-7000 with protection at least pay protection, seniority and his basic pay of Rs.4875 w.e.f. 23-1-1998 with all consequential benefits such as seniority, promotion etc. and pass any other order or orders as is deemed fit, proper, necessary and expedient in the circumstances of the case.”

The respondents therein resisted the claim of the applicant by filing counter. The sum and substance of the counter is that the applicant was directed for medical examination at his own request since he expressed his inability to work as Skilled Grade I fitter. On medical examination, he was declared as fit for C-I category post and recommended for sedentary job only. He was neither de-categorized for

medical category C-I as per visual physical standard nor found unfit for the present post held by him as advised in other cases, but was recommended for sedentary job in C-I only. There is no provision for sedentary type of job in the workshop in order to accommodate him in the suitable alternative post. Therefore, he was sanctioned 180 days of extra-ordinary leave. A screening was conducted on 9.1.1998 by the Committee consisting of three officers and the applicant was found suitable for absorption as junior clerk in the scale of 3050-4590 RS(RP) in Stores department on bottom seniority. Accordingly, office order dated 20-1-1998 was issued with certain conditions regarding his seniority etc. The applicant reported for duty in Stores Department as junior clerk on 23.1.198 without any protest or demur. The Railway Board vide Lr.No.E (NG)I-76/SR6/37, dated 18-9-1976 circulated by Chief Personnel officer, South Central Railway, Secunderabad under Serial Circular No.179/76 also clarified that the orders in regard to fixation of seniority of medically de-categorized staff absorbed in alternative posts will not apply to staff recommended for change in category on medical grounds and will be governed by the same rules as staff transferred at their request. The same rule was reiterated in para 1314 of IREM 1989 Edition as well as in Railway Board letter dated 29-4-99 (RBE 89/99) circulated by Chief Personnel officer, Secunderabad vide Serial Circular No.138/99. The modified instructions to the existing Rules in Chapter XIII of IREM (Indian Railway Establishment Manual) (Revised edition 1989) are effective from 29-4-1999 and as the applicant change of category was at his own request in the year 1997 the modified instructions issued in 1999 were not applicable to him.

4. The learned Central Administrative Tribunal, on considering the material brought on record and on hearing both the parties, by order dated 10-12-2002 held that the applicant was entitled for protection of his basic pay of Rs.4875 and all consequential benefits such as seniority, promotion etc. Assailing the order, the respondents therein

have filed this writ petition.

5. Heard learned Standing Counsel for Railways on behalf of the petitioners and also the learned counsel for the respondent-applicant.

6. Learned Standing counsel for Railways appearing for the petitioners submits that as a change of category on medical ground was on the request of the respondent herein, the respondent was not entitled to claim any benefit under the provisions of the Act. He further submits that senior clerk is the selection post and therefore the respondent was not eligible to be considered for the said post on medical de-categorization at his request and therefore his last drawn pay could not be protected while absorbing in the requisite scale except to grant the stagnation increments till the next promotion as senior clerk in the scale of 4500-7500 RS(RP) after passing the requisite selection test. It is also submitted by him that the learned Central Administrative Tribunal misconstrued and mis-applied the provisions of Sec.47 of the Act and thereby erred in allowing the application.

7. Learned counsel for respondent-applicant contends that the very fact of referring the respondent-applicant to the medical examination itself is sufficient to conclude that the authorities required him to undergo medical test under the scheme called "Absorption of medically incapacitated staff in alternative employment" (Chapter XIII of Indian Railways Establishment Manual Volume I). It is also contended by him that the fact of respondent-applicant subjecting himself for medical examination at his own request does not disentitle him to claim the benefits of the scheme and also the provisions of the Act.

8. The point in issue is whether the petitioner is entitled to claim the benefit of the provisions of the Act and the provisions of Chapter XIII of

9. The facts, which are not in dispute, are that the respondent-applicant was appointed as Local Khalasi on 27.1.1969 at Vijayawada and was granted temporary status and he was regularized in Group D post of Khalasi on 28.4.1991 and was classified as Khalasi Helper on 1.2.1980. He was promoted as Skilled Grade III Fitter on 1.1.1981 and as Skilled Grade II Fitter on 1.1.1984 and further promoted as Skilled Grade I Fitter on 22.3.1989. He submitted representation on 24.4.1997 requesting the authorities to refer him for special medical examination to assess his fitness to discharge the duties of Skilled Grade I Fitter. He was examined by the Medical Board in terms of Para 543 of Indian Railway Medical Manual and he was found not fit to work as Fitter, but was found to be fit in C-I category for a sedentary job. The screening Committee considered the representation of the respondent-applicant and offered him alternative appointment as Junior Clerk in the pay scale of Rs.3050-4590 by relaxing the qualification of pass in SSC with knowing of typing of 30 words per minute in English and 25 words per minute in Hindi. He accepted the alternative appointment and joined duty on 23.1.1998. Later on, he submitted representation on 10-4-2000 for review of his case with a view to get the benefits of the said scheme. He was sent for medical examination on 20-4-2000. The Chief Medical Superintendent, Railway Hospital, Vijayawada issued certificate opining that he was not fit for fitter's job but he was fit for sedentary job in C-I category and thereby he affirmed the earlier report dated 28-7-1997. He did not indicate the extent of physical disability of the respondent-applicant. The application of the respondent-applicant for review of his medical fitness came to be turned down by the authorities on 28.11.2000. Hence, the respondent-applicant filed O.A.No.1368 of 2002 claiming the relief as stated supra.

10. The learned Central Administrative Tribunal allowed the O.A. on

the ground that the respondent-applicant is entitled to claim the benefits of the provisions of S.47 of the Act and that there could not be any distinction between the employees who voluntarily subject themselves for medical examination and those who were made to undergo medical examination by the employer without a request being made in this regard for the purpose of claiming benefit under the provisions of the Act and circular instructions of the Railway Board. As on the date of the application by the respondent-applicant, where under he sought for medical examination, he was drawing basic pay of Rs.4875. In the alternative post provided to him as junior clerk, his pay was fixed at Rs.4590 in the pay scale of Rs.3050-4590. If the provisions of the Act and the said Scheme are applicable to the respondent-applicant, the action of the authorities in appointing him as junior clerk and fixing his pay at Rs.4590 is definitely not sustainable. At the cost of repetition we may state that the petitioner sought for his medical examination on the ground of his inability to discharge his duties as Skilled Grade I Fitter because of severe pain on his left knee joint and muscle wasting of the left leg. It can be said without any controversy that he requested for change in category on medical ground. In such a situation whether the provisions of the Act and the Scheme are applicable to him? We can find the answer in the Scheme itself. It is explicit from Chapter XIII of Indian Railways Establishment of Manual Vol.I which deals with absorption of medically incapacitated staff that the staff who get their cases recommended for a change of category on medical ground will not get the benefit of the Scheme but they will be treated as staff transferred on their own request. Chapter XIII came to be revised and the revised provisions came into effect from 29.4.1999. Even in the revised provisions the staff who got their cases recommended for a change of category on medical ground will not get the benefit of these provisions. The request of the respondent-applicant for de-categorization on medical grounds does not fall under the Scheme enunciated in chapter XIII of the Indian Railway Establishment Manual

Vol.I. Even under the provisions of the Act he cannot be categorized as a disabled person. It is useful and necessary to know a few definitions as contained in Sec.2 and 47 of the Act, which are as follows:

"2. Definitions - In this Act, unless the context otherwise requires, - (a) to (d)..... (e) "Cerebral palsy" means a group of non-progressive conditions of a person characterized by abnormal motor control posture resulting from brain insult or injuries occurring in the pre-natal, perinatal or infant period of development; (f) to (h)..... (i) "disability" means (i) to (iv)..... (v) loco motor disability; (vi) to (vii)..... (j) (k) "establishment" means a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a local authority or a Government company as defined in section 617 of the Companies Act 1956 (1 of 1956) and includes Departments of a Government; (l) and (n)..... (o) "locomotor disability" means disability of the bones, joints or muscles leading to substantial restriction of the movement of the limbs or any form of cerebral palsy."

(p) to (s)..... (t) "persons with disability" means a person suffering from not less than forty per cent of any disability as certified by a medical authority; (u) to (v)..... (w) "rehabilitation" refers to a process aimed at enabling persons with disabilities to reach and maintain their optimal physical, sensory, intellectual, psychiatric or social functional levels;

"47. Non-discrimination in Government employments. (1) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service; Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits: Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier. (3) No promotion shall be denied to a person merely on the ground of his disability: Provided that the appropriate

Government may, having regard to the type of work carried on in any establishment by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section."

A person with disability means a person suffering from not less than forty percent of a disability as certified by the Medical authorities as per the definition under section 2(o). The medical examination of the respondent-applicant does not reveal that he sustained locomotive disability. Chapter VI deals with employment relating to persons with disabilities including identification of posts and reservation of vacancies for such persons. Under this Chapter, reservation of vacancies for persons with disabilities is made for initial appointments. Section 47 in Chapter VIII deals with an employee of an establishment who acquires a disability during his service. It must be borne in mind that Section 2 of the Act has given distinct and different definitions of "disability" and "person with disability". It is well settled that in the same enactment if two distinct definitions are given defining a word/ expression, they must be understood accordingly in terms of the definition. It must be remembered that person does not acquire or suffer disability by choice. An employee, who acquires disability during his service, is sought to be protected under Section 47 of the Act specifically. Admittedly, the Medical Board which examined the respondent-applicant did not certify that he has been suffering from not less than 40 percent of disability. Therefore, severe pain on the left knee joint and muscle wasting of the left leg of the respondent- applicant cannot be categorized as disability within the meaning of the Act. When once the respondent-applicant is not a person with disability within the meaning of the Act, he is ineligible to get protection under Section 47 of the Act and so also the provisions of the said Scheme. The learned Tribunal without considering the provisions of the Act and the Scheme in right perspective has recorded a finding that the respondent-applicant has developed a serious disability during the course of the employment on

account of the nature of duties performed by him and was medically decategorised after subjecting him for medical examination by the Medical officer of Railways. The said finding of the learned Central Administrative Tribunal is not based on any material brought on record. Therefore, the order of the learned Central Administrative Tribunal suffers from serious infirmities and the same is liable to be set aside. When once the respondent-applicant is not covered under the Act and the said Scheme, he is not entitled to get protection of his pay and also other consequential benefits. Accordingly he is not entitled to claim any relief in the said O.A.

11. In the result, this writ petition is allowed setting aside the order dated 10-12-2002 passed in O.A.No.1368 of 2002 on the file of Central Administrative Tribunal, Hyderabad Bench, Hyderabad. Consequently the O.A.No.1368 of 2002 stands dismissed. In the circumstances of the case no order as to costs.

(G.Bikshapathy, J)

Tnb

Dated: 29-6-2004.

(B.Seshasayana Reddy, J)

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Tuesday, the Twenty Ninth Day of June, Two Thousand and Four.

..... REGISTRAR

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SECTION OFFICER

To

1. The Central Administrative Tribunal, Hyderabad.
2. 2CD copies